1949

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill N, intituled:
"An Act respecting Bankruptcy"

No. 3

TUESDAY, MARCH 29, 1949
THURSDAY, MARCH 31, 1949

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESS

Mr. R. C. Merriam, barrister, Ottawa, representing a group of British Columbia Industrial Firms

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APPENDICES

L. Letter from Mr. A. W. Bruce, President, Association of Canadian Small Loan Companies.

M. Draft amendment to section 52 (copyright), submitted by the Honourable A. David.

N. Brief on behalf of the Law Society of Upper Canada, submitted by Mr. Lee A. Kelley, K.C., and Mr. Charles L. Dubin.

O. Letter from Mr. Jules E. Fortin, Secretary-Treasurer, The Dominion Mortgage and Investments Corporation.

P. Memorandum of The National Committee of Canadian Commercial Travellers, submitted by Messrs. Foster, Hannen & Co., barristers, Montreal.

Q. Brief on behalf of a group of British Columbia industrial firms, submitted by Mr. R. C. Merriam.

R. Submission by the Bar of the Province of Quebec.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1949

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 17th February, 1949.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (N), intituled: "An Act respecting Bankruptcy," be now read a second time.

After debate,

The said Bill was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Elie Beauregard, K.C., Chairman.

The Honourable Senators Aseltine, Aylesworth, Sir Allen, Ballantyne, Beaubien, Beauregard, Buchanan, Burchill, Campbell, Copp, Crerar, Daigle, David, Dessureault, Duff, Euler, Fallis, Farris, Fogo, Gershaw, Gouin, Haig, Hardy, Hayden, Horner, Howard, Hugessen, Jones, Kinley, Lambert, Leger, Mackenzie, MacLennan, Marcotte, McGuire, McKeen, McLean, Moraud, Murdock, Nicol, Paterson, Quinn, Raymond, Robertson, Sinclair, Taylor, Vien and Wilson.—47.

MINUTES OF PROCEEDINGS OF SUB-COMMITTEE

TUESDAY, March 29, 1949.

Pursuant to notice the Sub-Committee of the Standing Committee on Banking and Commerce, appointed on March 17, 1949, to consider and report back to the Committee on the evidence adduced and the briefs filed, with respect to the provisions of Bill N, "An Act respecting Bankruptcy", met this day at 11.00 a.m., at which hour a quorum was present.

The Honourable Senator Beauregard was elected Chairman of the Sub-Committee.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel.

The following submissions were presented by the Chairman, and were ordered to be printed in the record:—

Letter from Mr. A. W. Bruce, President, Association of Canadian Small Loan Companies. (Appendix "L")

Draft amendment to section 52 (Copyright), submitted by the Honourable Senator David. (Appendix "M")

Brief on behalf of the Law Society of Upper Canada, submitted by Mr. Lee A. Kelley, K.C., and Mr. Charles L. Dubin. (Appendix "N")

Letter from Mr. Jules E. Fortin, Secretary-Treasurer, The Dominion Mortgage and Investments Association. (Appendix "O")

Resolved that those persons or organizations of record as desiring to be heard, having filed no briefs and not having previously appeared before the Committee, be given an opportunity to make representations on Thursday next, 31st March instant.

At 11.30 a.m. the Sub-Committee adjourned to the call of the Chairman.

Attest.

JOHN A. HINDS,
Clerk of the Sub-Committee.

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MINUTES OF PROCEEDINGS

THURSDAY, March 31, 1949.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators:—Beauregard, Chairman, Aseltine, Beaubien, Campbell, Copp, Euler, Haig, Howard, Hugessen, Leger, McGuire, Moraud, Nicol, Fogo, MacLennan and Taylor—16.

In attendance:

Mr. J. F. MacNeill, Law Clerk and Parliamentary counsel.

The Official Reporters of the Senate.

The consideration of Bill N, "An Act respecting Bankruptcy", was resumed.

A letter dated March 30, 1949, from Messrs. Foster, Hannan and Company, barristers, Montreal, representing The National Committee of Canadian Commercial Travellers, was read by the Chairman.

Ordered that the brief attached to the said letter be printed in the record. (See Appendix "P").

On Motion of the Honourable Senator Haig, it was resolved that the Law Clerk and Parliamentary Counsel be directed to arrange, in alphabetical order, the definitions in the interpretation section of the English and French versions of the Bill, and that the letter indicating the paragraph in the other version be placed at the end of each definition.

Mr. R. C. Merriam, Barrister, Ottawa, was heard on behalf of the following British Columbia companies:—

American Can Company Limited.

Vancouver Supply Company Limited.

W. H. Malkin Company Limited.

Shell Oil Company of British Columbia, Limited.

A brief submitted by Mr. R. C. Merriam was ordered to be printed in the record. (See Appendix "Q").

A brief submitted by the Bar of the Province of Quebec was ordered to be printed in the record. (See Appendix "R").

Further consideration of the Bill was postponed.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST.

JOHN A. HINDS,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Thursday, March 31, 1949.

The Standing Committee on Banking and Commerce, to whom was referred Bill N, an Act respecting Bankruptcy, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the Chair.

The CHAIRMAN: Honourable members, first I wish to report that the subcommittee which met this week were informed that certain people wished to appear before the full committee, and it was decided to get in touch with them and give them an opportunity to come here. That is why we are meeting this morning, and unless the committee decides otherwise this will be the last occasion on which witnesses will be able to appear before the full committee. It was understood that we would have two witnesses this morning. One of these was to represent the National Committee of Canadian Commercial Travellers, but I have just received a letter from Messrs. Foster, Hannan, Watt and Stikeman, Montreal, who say that no one will appear on behalf of the association. However the letter is accompanied by a memorandum. (*See Appendix "P" to this report*).

The only witness we have present is Mr. R. C. Merriam, of the law firm of Gowling, MacTavish, Watt, Osborne and Henderson. He represents a number of firms in British Columbia, and with your permission I shall call upon him in a few minutes.

My attention has been drawn to a letter addressed to Senator Hugessen by the Board of Trade of the City of Toronto. The board has already made a submission to the committee and says it will send its representative here again if the committee so suggests. However, it has not been the practice of the committee to invite anyone to appear; rather, we have made it known that anyone is welcome to come here within the time set apart for our sittings. I do not know whether Senator Hugessen wishes to make any submission on behalf of the board.

Hon. Mr. HUGESSEN: Mr. Chairman, I think the only thing the Board of Trade of the City of Toronto wanted to make clear was that it has already submitted a memorandum, and if the committee wished to ask questions upon it a representative would appear here to answer them.

The CHAIRMAN: The board's memorandum has been printed in our records, and the committee has expressed no wish to ask any questions concerning it.

I would like now to have a motion that the memorandum from the National Committee of the Canadian Commercial Travellers be printed in our records.

Hon. Mr. HAIG: I so move, Mr. Chairman.

The motion was agreed to.

The CHAIRMAN: Do you wish to file a brief, Mr. Merriam, in addition to any submissions you make to us here this morning?

Mr. MERRIAM: Yes, Mr. Chairman, I will file a brief.

The CHAIRMAN: The subcommittee has decided not to begin the work of revising the bill until all the submissions that are going to be printed have been printed, so that whatever submissions there are with respect to any section may be considered at one time when that section is being dealt with. It has been

suggested that it would be useful to have all submissions compiled respectively under the headings of the sections to which they relate. This work of compilation will take some time. There is a further suggestion that the compilation itself should also be printed.

Then there is a point concerning the French version of the bill. Of course, both the French text and the English text are original, but since the bill has been printed in English the French text becomes necessarily a version of it. There are certain difficulties connected with the translation. For instance, in section 2, the Interpretation section, "assignment" is defined in clause (*b*), but the French word for "assignment" is "cession", so the order in which this definition would appear in the French version is different. Similar translation difficulties arose when the Shipping Bill was before us, and at that time it was suggested that the order of the definitions in the French version should be the alphabetical order, but that each definition should be accompanied by a note indicating to the reader in what clause of the English version the definition was given. I shall need a motion authorizing that to be done, and I understand that otherwise the French text will not be considered as an original. Is that right, Mr. MacNeill?

Mr. J. F. MacNeill, K.C., Law Clerk and Parliamentary Counsel: No, Mr. Chairman, that is not quite correct. All that the translators want is a direction from this committee to put the definitions in alphabetical order in the French version, and it is also necessary for the committee to instruct me to put the French lettering at the end of the English letter. Then if paragraph (*b*) in English is (*c*) in French, the letter "(*c*)" will be put at the end of the English paragraph (*b*), and "(*b*)" will be put at the end of the French paragraph (*c*), to show in each case where to find the corresponding definition in the other version. That was done in the Shipping Act, at the direction of this committee, and all we need now is the same direction with respect to this bill.

Hon. Mr. Haig: I would move that the direction be given.

The motion was agreed to.

The Chairman: There are no more detailed matters requiring our attention, so I will now call on Mr. R. C. Merriam.

Mr. R. C. Merriam, of Messrs. Gowling, MacTavish, Watt, Osborn & Henderson: Mr. Chairman, I am representing certain companies.

Hon. Mr. Euler: What companies?

Mr. Merriam: Certain companies in British Columbia, sir.

Hon. Mr. Haig: I would like to know what companies they are.

Mr. Merriam: The companies I am representing are a group of B.C. industrial concerns, composed of the American Can Company Limited, the Vancouver Supply Company Limited, W. H. Malkin & Company, Limited, and Shell Oil Company of B.C., Limited.

The group of firms which I have just enumerated have considered carefully the proposed Bill N, and while they are in general agreement with the provisions therein contained they have instructed me to make certain representations to this committee with regard to four sections as now worded. The first of these is section 79 (3) (*b*), which provides that where the bankrupt is a corporation, any officer, director or employee thereof may not vote on the appointment of a trustee or inspector. Our submission is that this should be extended to cover the situation where the parent company of a bankrupt subsidiary or associate is a creditor of that bankrupt. I think the reason for the proposal will become apparent when you consider the following example. One of the subsidiary companies of a parent company goes into bankruptcy, and it transpires that either the parent company or an associated company is a large creditor. The

obvious result would be, under the present wording, that the parent or associated company would practically control the election of the trustee or inspector, and of course quite naturally would see that someone acceptable to it was appointed to the position. To all intents and purposes it would then exercise complete control of the subsequent administration of the bankrupt subsidiary.

The fundamental reason, as we understand it, for providing that an officer, director or employee of a company may not vote on the appointment of a trustee or inspector is simply that the probabilities are that his interests are adverse to the interests of the creditor. We feel and we submit for your consideration that this same reason applies with equal force and equal effect to the situation where a parent or associated company is in the position of creditor of a bankrupt subsidiary.

Our submission, then, is that section 79 (3) (*b*) be extended to cover that situation or that a new subsection be added to take care of it.

Hon. Mr. Fogo: You mean that any interest would disqualify; are you suggesting that it would have to be a controlling interest in the company for the disqualification to operate?

Mr. Merriam: No; we are suggesting at least a substantial interest. I would not say that any small quantity of stock would be sufficient to disqualify. That would be a matter for discussion, as to how far that was going to be carried. I would be inclined to feel that a controlling interest would be a disqualification.

Hon. Mr. Fogo: It would necessitate a further definition of what was a substantial interest?

Mr. Merriam: That is true.

Hon. Mr. Haig: Mr. Chairman, Mr. Merriam, supposing a parent company had a large claim, but I was a minority stockholder in the company: your proposed legislation would preclude me from having anything to say in the vote on that trustee. I do not know why I should not be allowed to have it. The companies are different corporations with a different set of shareholders.

Mr. Merriam: That is true. They are individuals, regardless of their interlocking directorates.

Hon. Mr. Haig: But there are generally heavy minority shareholders. In a good many companies I know of they say, "Such-and-such a company is controlled by the Standard Oil", but there are a tremendous number of shareholders in the other company which are not in the Standard Oil.

Mr. Merriam: Our feeling was that in many instances that is not the case.

Hon. Mr. Haig: I have not read the details of the provision, but the old act provided that the small fellow had quite a vote. I can imagine a $100,000 claim, and 10,000 other claims; the 10,000 would have as many votes as the 100,000. It was not so under the old bill. If you had one hundred, let us say, you had a vote; if five hundred, you had two votes, and so on. Well, then the smaller debtors had a tremendous control. I did a lot of work under this in Winnipeg up until twenty years ago; and the small creditors came always very near controlling.

Hon. Mr. Campbell: I understand you had in mind that if a company is a bankrupt, then any company that is controlled by the bankrupt should be deprived,—that is their officers should be deprived of the right to vote?

Mr. Merriam: No, just the reverse of that.

Hon. Mr. Hugessen: The case envisaged is where the parent company is creditor of a subsidiary which goes bankrupt and wishes to vote for the appointment of the trustee?

Mr. Merriam: Yes.

Hon. Mr. HUGESSEN: And you feel that this provision would prevent an officer or employee of the parent company who happens to be an officer and employee of the subsidiary from voting for the trustee?

Mr. MERRIAM: No. My point is that I want this to cover this situation,—that an officer or employer of the parent company will not be allowed to vote.

Hon. Mr. HAIG: The parent company will not be allowed to vote at all.

Hon. Mr. CAMPBELL: Surely it should only apply where the bankrupt is a wholly-owned subsidiary.

Hon. Mr. HAIG: There are a lot of companies where the controllers own about 60 per cent; that is all they own; and since succession duties are so heavy, the tendency in all business is that the larger companies have a large outside stockholding, so that when a very heavy stockholder in the company dies, there is a place to sell some of his stock.

Mr. MERRIAM: Yes; that is more and more the case all the time.

Hon. Mr. HAIG: I would be afraid that this would deny these people representation at all.

Hon. Mr. CAMPBELL: And what about your preference shareholders, who are really interested in the problem as much as the common shareholders?

Hon. Mr. HAIG: More so.

Mr. MERRIAM: They are only interested in the actual assets of the company in which they happen to be preferred shareholders. I grant you that on the books of the company this debt will be carried as a credit, probably; but it seemed to us that, in the same way that the directors of a company control that company, and therefore are precluded from voting in the appointment of a trustee, if you swing over to the case of the parent company which in exactly the same fashion controls the subsidiary, the same principle should apply.

Hon. Mr. EULER: Would you say that if a parent company owns practically all the stock in the subsidiary company that becomes bankrupt, that parent company should have nothing whatever to say as to the appointment of a trustee?

Mr. MERRIAM: That is my submission, sir, yes; on the same basis that the actual directors of that company have nothing to say in the appointment of the trustee.

Hon. Mr. EULER: That does not seem right.

Hon. Mr. HAIG: And it is worse when it only owns 55 per cent of it.

Hon. Mr. EULER: They ought to have something to say, when they control the company altogether. I cannot see why these people who are most concerned in the bankrupt company's affairs should be entirely deprived of the right to say who shall be the trustee. It does not look equitable to me.

Hon. Mr. HAIG: I can see the case where maybe half a dozen outside debtors could control the whole thing.

Mr. MERRIAM: Yes.

Hon. Mr. EULER: Sure they could.

Hon. Mr. HAIG: And the real big money in the concern would be unrepresented, under your provision. As the matter stands in the original bill, the directors of the defunct company cannot do it. I can understand them not voting, because they are the rascals that broke it up.

Mr. MERRIAM: Does not that apply to wholly-owned subsidiaries, where the directors of the parent company are the ones who actually conducted the transactions of the subsidiary company, so that in effect they have wrecked it themselves?

The CHAIRMAN: Would you not like to cut out the words "rascal" and "wrecked"?

Hon. Mr. HAIG: No, I would not, because they know they are upsetting the company before it gets to the voting stage. If they do not, they ought to.

The CHAIRMAN: Will you proceed, Mr. Merriam?

Mr. MERRIAM: Our next submission is in relation to section 82 of the bill, which relates to the appointment of inspectors, and our submission in this respect is simply that a further subsection be added to provide that a creditor corporation may itself be appointed inspector. Now, quite often inspectors are chosen on the basis that they represent the large creditors, which in many instances happen to be a corporation. Usually, or in any event in many instances, the credit manager say of a large creditor corporation is personally appointed as an inspector. In time he may be promoted in the company to another department; he may leave the employ of the company entirely; and in either of these cases he has lost any real personal interest in the position of his ex-company as a creditor; and moreover he is out of touch with the affairs of the bankrupt generally. Our suggestion and submission in circumstances such as this is that the creditor corporation itself be appointed the inspector, with power to designate one of its employees to exercise the duties of inspector in its name.

The CHAIRMAN: Is not that sufficiently provided for under paragraph 5 of the same article, which states, "The creditors may at any meeting and the court may on the application of the trustee or any creditor revoke the appointment of any inspector and appoint another in his stead"? Is not the door opened widely enough by that subsection? If a company is a creditor and it wants another man, the company may come before the court and say that Mr. So-and-So is no longer in its employ, and suggest that another person be appointed.

Mr. MERRIAM: There is a provision for changing it; there is no question about that; but it seems to me that this is a somewhat more involved procedure; that it would be much simpler if the corporation itself were the trustee and had the power to designate who should be appointed in its behalf, without having to make application to the court in the event of changes taking place.

Hon. Mr. MORAUD: That is, you would leave it to the company creditor?

The CHAIRMAN: It might be that Mr. So-and-So from the company has been appointed by the creditors on account of his personality, and that he might not have been appointed if he had been a different man. It would be another thing to have his successor in office appointed automatically.

Hon. Mr. HAIG: In actual experience in the carrying out of these assignments, the people who are usually creditors, or are quite often creditors, like wholesale houses, have men whose special job is practically just this.

Mr. MERRIAM: That is quite right, sir.

Hon. Mr. HAIG: Well, in any case that I have known of, immediately an employee resigns, they go back to the court and ask for a new man to be appointed, and the court appoints a new man in his place, and it is generally on the recommendation of the same creditor.

Mr. MERRIAM: Yes, that is just it. Usually what the creditor wants, if he wants to appoint—

Hon. Mr. HAIG: There may be personalities involved, and creditors might say, "No, not this new man; we don't like him, we want somebody else in there", and they might put the somebody else in. I think it would happen. I would rather leave it the way it is.

Hon. Mr. MORAUD: The inspectors are appointed to represent the creditors at large, not to represent one creditor.

Hon. Mr. HUGESSEN: Would it not be most unusual for a corporation to be appointed an inspector, any more than for a corporation to be appointed as a director? I cannot see how a corporation could be appointed to a personal office of that kind.

Hon. Mr. HAIG: But he is not appointed because he represents that corporation. True, he happens to represent them, but, as the Chairman says, he represents the personality: the creditors all feel that he can represent them all.

The CHAIRMAN: All right; go ahead.

Mr. MERRIAM: The next submission deals with section 121, subsection 1; and my instructions are to submit this as strongly as I can for your consideration, that this section as presently worded provides for the examination of the bankrupt and certain other persons "before the registrar of the court or other authorized person". Quite often this examination is held before an official stenographer, or even before the registrar, and in many cases it turns out that it is perfunctory and of not great value in the administration of the estate. I have been instructed to submit to you that a provision be inserted whereby the bankrupt may be examined before the judge in bankruptcy himself on the request of the trustee and with the approval of the inspectors; and it is our belief that there are numerous instances in which such an examination would be a great benefit in the administration of the estate and in the protection of the creditors.

Hon. Mr. LEGER: This is not a trial; it is simply to get out the evidence; so anybody who can take the evidence would be competent.

The CHAIRMAN: I feel that the judges entrusted with the administration of the law would not share your views, witness, because at times there are many bankruptcies, and the court is occupied all day with the hearing of trials; and if furthermore the judge had to hear evidence of this type, which we call preliminary evidence, or ex parte evidence, I do not know when he would have time to do it.

Hon. Mr. LEGER: It seems to me that the registrar of the court would be the proper officer before whom to hold these examinations.

Mr. MERRIAM: In most instances that is what would happen, but every so often there would be a case which is just off the beaten track, and in which you are not going to get to the root of the assets owned by the bankrupt except under the most thorough examination; and it is our feeling that thoroughness can be much more effectively accomplished before a judge.

The CHAIRMAN: Is it not your experience that the thoroughness of the examination depends entirely on the lawyer's knowledge as to the case rather than on the presence of the judge?

Mr. MERRIAM: I think they both work hand in hand, Mr. Chairman. I think the presence of a judge adds tremendously to any examination.

Hon. Mr. FOGO: Would you not get more latitude before the registrar than before a judge, in an examination?

Mr. MERRIAM: That could be, sir.

Hon. Mr. CAMPBELL: Mr. Chairman, Mr. Merriam's suggestion may be a good one for cases where it is desirable to test the creditability of the bankrupt or a witness. It seems to me that if the proposed amendment were made we should provide that an examination may be held before the Judge in Bankruptcy only after special leave obtained from the judge upon application to him.

Mr. MERRIAM: That would serve the purpose, sir.

Hon. Mr. CAMPBELL: A person should not be able to obtain an examination before the Judge in Bankruptcy as a matter of right.

Mr. MERRIAM: We do not propose that every case be examined before the judge. I think your suggestion would meet our submission perfectly, sir.

Hon. Mr. HUGESSEN: If the registrar feels that a witness is not telling the truth and that he has not sufficient authority to deal firmly with the witness, could the registrar under the ordinary court rules not refer the case to the judge?

Hon. Mr. HAIG: I do not think you would get the registrar to do that.

Hon. Mr. MORAUD: Let the Judge decide the matter.

Hon. Mr. HAIG: Application could be made to the Judge for special leave, as Senator Campbell suggests.

Hon. Mr. LEGER: Subsection (1) of section 121 says that the trustee may examine without an order. I should think that an order could be made for examination before a Judge.

Hon. Mr. HAIG: That may be so.

Hon. Mr. CAMPBELL: But I do not think it is the practice.

Mr. MERRIAM: Section 121 (2) provides for examination after an order, but only for examination "before the registrar or other authorized persons".

Hon. Mr. HUGESSEN: Could the word "judge" not be inserted there before the word "registrar"?

Mr. MERRIAM: Yes, sir, that would cover the point.

Our final submission is in relation to section 142 (1), which provides that the Chief Justice may nominate or assign one or more of the judges of the court to exercise the judicial powers and jurisdiction conferred by this Act. Our submission is that this should be mandatory rather than permissive; in other words, that "shall" should be substituted for "may".

Hon. Mr. LEGER: The Chief Justice always does nominate one of the judges as Judge in Bankruptcy.

Mr. MERRIAM: We would like that requirement to be made mandatory.

Hon. Mr. FOGO: Do you know of any province where it is not done?

Mr. MERRIAM: I do not know of any, sir.

Hon. Mr. HAIG: That is what is usually done, but there is nothing in the Act saying that it has to be done.

Mr. MERRIAM: That is the point, sir.

The CHAIRMAN: The jurisdiction is with the Chief Justice.

Mr. MERRIAM: We do not suggest that the Chief Justice should exercise that jurisdiction himself, for he has too many other things to do. We feel it would be of great assistance to inspectors, trustees and everyone else interested in the administration of estates to know that one judge in the province was an authority on the subject, and that when something out of the ordinary arose they could go to him for direction. That would overcome many difficulties.

The CHAIRMAN: Is it not the practice that the Chief Justice nominates one or two judges to look after bankruptcy work?

Mr. MERRIAM: I think that is usually done, Mr. Chairman.

Hon. Mr. HUGESSEN: Can you cite us any actual case where the Chief Justice of a province has not nominated a judge to act?

Mr. MERRIAM: No, sir, I cannot.

Hon. Mr. HAIG: Mr. Chairman, I think we should not recommend any change in the section unless we can be shown some cases of abuse. In our province of Manitoba one judge is assigned for bankruptcy work, and if he becomes ill or has too much work to do the Chief Justice assigns another man.

Hon. Mr. MORAUD: Has there been any complaint about the present method?

Mr. MERRIAM: No, senator. This is merely a suggestion.

Hon. Mr. MORAUD: I have never heard of any complaint in Quebec.

Hon. Mr. HUGESSEN: Nor have I.

Hon. Mr. MORAUD: I think we should leave well enough alone.

Hon. Mr. LEGER: At present the Chief Justice may delegate his powers. I do not think we should say he must do so.

Hon. Mr. HUGESSEN: No. In some instances he might choose to act himself.

Hon. Mr. HAIG: The present practice has worked all right in Manitoba.

Mr. MERRIAM: It has worked all right in Ontario too, sir. I have not been instructed that there are any particular complaints. We are making merely a suggestion here.

Hon. Mr. HAIG: I agree with Senator Moraud that we should leave well enough alone.

Mr. MERRIAM: That concludes our submissions, Mr. Chairman, and I wish to thank the committee for hearing me.

The CHAIRMAN: On behalf of the committee I thank you for presenting the submission, Mr. Merriam.

The committee adjourned, to resume at the call of the Chair.

APPENDIX "L"

ASSOCIATION OF CANADIAN SMALL LOAN COMPANIES

217 Bay Street
Toronto 1, Ont.
March 12, 1949.

The CHAIRMAN,
The Standing Committee on Banking and Commerce,
The Senate,
Ottawa, Ontario.

Re: Bill "N"—An Act Respecting Bankruptcy

GENTLEMEN: Section 135 of the Bill lists debts from which a bankrupt is not released by an order of discharge.

Clause (*c*) of this Section reads—"any debt or liability for maintenance and support of his wife and children."

Consumer cash-lending agencies, (Licensees under Small Loans Act), may make loans of cash for the purpose of liquidating indebtedness assumed for such purposes.

We respectfully suggest that such a loan should be included within the meaning of Section 135.

This can be done by adding a clause (*f*) to paragraph (*l*) of the following effect—

(*f*) any debt or liability incurred for the purpose of discharging another debt or liability from which the bankrupt would not be released by an order of discharge.

Yours very truly,

A. W. BRUCE,
President

APPENDIX "M"

AN ACT RESPECTING BANKRUPTCY—Senate Bill N—1949.

Draft amendment to section 52: "Copyright".

Submitted by the Honourable Senator David.

For clause 52, substitute the following:

Copyright, manuscripts and unmarketable material to revert automatically to the author.

52 (1). Notwithstanding anything contained in this Act or in any other statute, any copyright or any interest in a copyright in whole or in part assigned to a publisher, printer, firm or person becoming bankrupt or against whom a receiving order has been made—if the work covered by such copyright has not been published and put on market at the time of the bankrupt or of the receiving order—shall automatically revert and be delivered to the

interested author or his heirs, as well as the author's manuscripts, proofs and revises of his set-up work and any material deriving from his work and not intended for the public market; and any contract or agreement between the author or his heirs and such bankrupt or person shall then terminate and be null and void.

If copies of the work are on the market.

(2) If, at the time of the bankrupt or receiving order, the work was published and put on the public market, the trustee shall not be entitled to sell, or authorize the sale or reproduction of, any copies of the work, or to perform or authorize the performance of the work, except on the terms of paying to the author or his heirs such sums by way of royalties or share of the profits as would have been payable by the bankrupt, nor shall he, without the written consent of the author or his heirs, be entitled to assign the copyright or transfer the interest or to grant any interest therein by licence or otherwise, except upon terms which will guarantee to the author or his heirs payments by way of royalties or share of the profits at a rate not less than that that which such bankrupt or person was liable to pay. And any contract or agreement between the author or his heirs and such person or bankrupt shall then terminate and be null and void, except as for the disposal, under this subsection, of copies published and put on the market before the bankruptcy or the receiving order.

Marketable copies to be first offered for sale to the author.

(3) Before disposing, in the manner prescribed in this section, of the manufactured and marketable copies, if any, of the copyright work comprised in the estate of such person or bankrupt, the trustee or other winding-up authority shall by writing offer the interested author or his heirs to sell same himself or themselves at such price, terms and conditions as the trustee or winding-up authority may deem fair and proper to all whom it may concern.

APPENDIX "N"

SUBMISSIONS OF THE LAW SOCIETY OF UPPER CANADA TO THE STANDING COMMITTEE ON BANKING AND COMMERCE OF THE SENATE OF CANADA WITH RESPECT TO SENATE BILL N, (AN ACT RESPECTING BANKRUPTCY)

To: The Honourable E. Beauregard, Chairman,
and Members of the Committee on Banking and
Commerce of the Senate of Canada,
Parliament Buildings,
Ottawa, Ontario.

We have had an opportunity to consider the representations made by the Honourable Mr. Justice Urquhart and the Board of Trade of the City of Toronto, and the Law Society does approve, in principle, the representations made to your Committee in those briefs. We should also like to join with the Board of Trade and Mr. Justice Urquhart in recording the appreciation of the Law Society for the work performed by the Superintendent of Bankruptcy in developing the revision of the Bankruptcy Law. We should like, however, to add a few observations with respect to particular sections of the Act.

Section 21 (a)—Petition for Receiving Order

Section 21 (*a*) provides in part that one or more creditors may file in Court a petition for a receiving order against a debtor if the debt or debts owing to the petitioning creditor or creditors amount to $1,000,000. This new section increases from $500.00 to $1,000.00 the debt necessary in the case of a petition for a receiving order. We submit that increasing the requirement from $500.00 to $1,000.00 imposes an unnecessary burden on a petitioning creditor in that in many cases it would be necessary for him to endeavour to join with other petitioning creditors of whom he has no knowledge in order to ascertain the debtor's liability and creditors are frequently reluctant to join in a bankruptcy petition. It is, therefore, submitted that the present requirement of $500.00 would seem to be a reasonable amount, and that section 21 (*a*) be amended to reduce the amount required to $500.00.

Section 25—Re Exclusion of Section 21 and Following

The effect of this proposed section would exempt a wage earner who does not earn more than $2,500.00 a year from those provisions of the Act relating to the application for a receiving order. In the present Act the amount is $1,500.00 and it is submitted that this figure should remain and that an increase to $2,500.00 is not warranted.

Section 83 (1) and Section 144 (8) Re Debts Provable in Bankruptcy and Trial of Issue

One of the important changes in the Bankruptcy Act is in Section 83 (1) of Bill N. Prior to this amended section, one could only prove in bankruptcy for unliquidated claims arising by way of a contract, promise, or breach of trust. Unliquidated claims for tortious actions, or in actions arising otherwise than by reason of a contract, promise, or breach of trust, could not be proved in bankruptcy. However, now it will be possible to prove in bankruptcy for unliquidated claims arising out of a tortious transaction.

Thus, one could make a claim against the bankrupt estate for damages arising, let us say, out of the ordinary negligence action. Although there is much to be said for the extension of the Act in this regard, the difficulty arises where the proceedings with respect to the tortious action are pending at the time the assignment, or receiving order is made, and there is no settlement and no judgment. Under such circumstances the Bankruptcy Court under the proposed Section 144 (8) could direct a trial of an issue to determine the liability and the quantum of damages, but under the present subsection the Court is limited in that the issue could only be tried by Judge or other officer of the Court of any of the provinces, and there is no provision for trial by jury under such circumstances.

Thus, if the section were to stand as it is now, the Plaintiff in a negligence action, in which the defendant becomes a bankrupt before judgment, would be deprived of his right to a trial by jury.

This Section should be amended to permit the litigant to pursue his ordinary course where there is a dispute as to either the liability or the amount of damages and subsection 8 of Section 144 should permit the Court, in directing the issue to be tried, to allow the litigant trial by jury if under ordinary circumstances he would be so entitled. We suggest that Section 144 (8) should be amended to read as follows:

> The Court may direct any issue to be tried or inquiry to be made by any judge or officer of any of the courts of the provinces or by a Judge or jury according to the practice relating thereto to trial of such

issues and the decision of such judge or officer is subject to appeal to a judge in bankruptcy unless the judge is a judge of a superior court or unless the issue shall have been tried by a jury when the appeal shall, subject to section 150, be to the Court of Appeal.

Section 127 and Following—Re: Automatic Discharge of Bankrupt

Another rather radical change is the amendment to the Act relating to the application for discharge of a bankrupt. Under the new procedure the making of a receiving order against, or an assignment for discharge of the bankrupt. This appears in Section 127, and following, in the proposed Act, and thus places on the Trustee the onus and expense of obtaining an appointment for the application for discharge.

It does appear that treating the receiving order or assignment as an automatic application for discharge is somewhat contrary to public policy, having in mind the history and purpose of the Bankruptcy Act. While it is true that there has been from the beginning of Bankruptcy legislation a trend in favour of the debtor, nevertheless, keeping on him the onus of applying for his discharge would appear to have a salutary effect. In other words, it has often been said that the purpose of bankruptcy legislation is to permit an honest but unfortunate debtor to obtain a discharge from his debts subject to reasonable conditions and thus be enabled to make a fresh start, as well as affording creditors an expeditious and inexpensive method of compelling an insolvent debtor to turn over his property to a trustee for rateable distribution amongst his creditors.

It would appear more in keeping with such policy if the onus of obtaining his discharge, after having satisfied the requirements of the Bankruptcy Act, were left with the debtor and in this way giving him the satisfaction as well as the burden of satisfying the Court that he has complied with the Act rather than placing this burden on the bankrupt's estate.

However, it would certainly be in order to retain in the new Act the provision of Section 128 relating to the Trustee's report as to the affairs of the bankrupt and the manner in which he has performed his duties and the many other requirements of that section, so that the information could be on record whenever the bankrupt would apply for his discharge. The argument in favour of automatic discharge is that frequently the bankrupt does not know of his right to make such an application. This might well be cured by requiring the Trustee to notify the bankrupt of his right to make such an application. In the event that the bankrupt does not wish to make such an application surely the duty for such application should not lie with the Trustee nor should the estate have to bear the expense.

Section 155 (7)—Legal Costs

Under the proposed section 155 (7) there is a limitation on the total fees available for legal services which excludes, in computing the amount from which the percentage of 10 per cent is to be taken, the amounts paid to secured creditors.

The difficulty is that frequently the handling of secured creditor's claims causes considerable and often complicated legal work and there would appear to be no justification for deducting this item in computing the maximum of legal fees.

We suggest that this subsection be amended so that in computing the percentage, with respect to the maximum fees, the amounts paid to secured creditors as well as all items be included, and that the section should read as follows:

(7) Notwithstanding anything in this section, the total legal costs exclusive of disbursements for all legal services specified in paragraph (*e*) of subsection six shall not exceed ten per cent of the gross receipts except with the approval of the inspectors and the court, and, where the amount thereby available or authorized for payment of such legal fees is insufficient, the fees shall be abated proportionately.

Section 140 (1) (e)—Jurisdiction of Courts

In Section 140 (1) (*e*) there is reference made to the High Court of Justice for the Province of Ontario. Actually under our Judicature Act the High Court of Justice is only a branch of the Supreme Court of Ontario and that section should be amended to read "In the Province of Ontario, the Supreme Court of Ontario". That this is necessary would appear from other sections, such as 144 (1) which requires every Court to have a seal. There is only one seal in our High Court in Ontario and that is the seal of the Supreme Court of Ontario and there is no separate seal for the High Court of Justice.

All of which is respectfully submitted.

LEE A. KELLEY, K.C., and
CHARLES L. DUBIN
Of Counsel

APPENDIX "O"

THE DOMINION MORTGAGE AND INVESTMENTS ASSOCIATION

Toronto 1, Canada,

March 28, 1949.

Re: Senate Bill N—An Act Respecting Bankruptcy

Dear Sirs: In our letter of March 4, 1949, we advised that this Association had no representations to make on the provisions of Bill N in their present wording. It has come to our attention, since that time, that some of the submissions made to you on March 10, 1949, have made reference to the Companies' Creditors Arrangement Act and advocated the modification or repeal of that Act. Our member companies, being the life insurance, loan and trust companies representing the major portion of the business of these types in Canada, are large investors in the bonds, debentures and other securities of corporations. They are very much interested, therefore, in legislation and procedures under which arrangements between corporations and their creditors may be effected.

On June 20, 1946, when you had under consideration Bill A-5, an Act respecting Bankruptcy, our representative Mr. Terence Sheard was a witness before you in support of our Brief. His evidence and a copy of our Brief were printed in your Proceedings, number 3, June 20, 1946. The essence of our submission was that (1) the Bankruptcy Act was not a suitable means of effecting reorganizations of large public companies with issues of securities largely distributed in the hands of the public; and (2) the Companies' Creditors Arrangement Act had proved to be a valuable instrument to effect corporate reorganizations, that it had worked well from the viewpoint of the investor and that it should be retained in full force and effect. Nevertheless, we

recognized that abuses had taken place in some cases in the compromise under the Act of the rights of trade creditors where there had been no general public investment interest. To prevent the kind of abuses which had occurred and to insure that so far as small companies are concerned recourse will be had to the Bankruptcy Act, we suggested amendments to the Arrangement Act in the form of a draft bill appended to our Brief. These amendments were prepared by Mr. R. B. F. Barr of the legal firm Blake, Anglin, Osler & Cassels, Toronto, in consultation with the late Mr. W. Kaspar Fraser, K.C., Toronto, and the late Mr. Gilbert S. Stairs, K.C., Montreal.

We continue to hold the views we expressed in 1946 and desire to reiterate our submissions to you at that time.

While we appreciate that the Companies' Creditors Arrangement Act is not before you, we feel that Bill N and the Arrangement Act are related in their operations. In our view, there is grave doubt that compromises of claims arising under bond mortgages can be carried out effectively under Bill N because of the secured nature of the claims and because the scheme of Bill N does not lend itself to dealings with holders of bearer securities. Where a company has outstanding obligations evidenced by trust indentures, both secured and unsecured, as well as ordinary trade debts, and where the rights of preferred and common shareholders of various classes are involved, the situation is greatly complicated. We believe that the Bankruptcy Act and the Companies' Creditors Arrangement Act, as well as the Winding-up Act, can and do each perform useful and necessary functions side by side and that each should continue to operate. We are, therefore, much opposed to any suggestion for the repeal of the Companies' Creditors Arrangement Act. Further, we consider that section 38 (2) of Bill N is a desirable provision (as is its counterpart, section 10 of the Arrangement Act) whereunder compromise proceedings under the Bankruptcy Act may be transferred by the Judge to proceedings under the Arrangement Act.

We have noted a suggestion that provision be made in the Arrangement Act for the intervention of a licensed trustee in proceedings under that Act. We consider that such a provision would be undesirable as the investor-creditor is already fully protected by Bondholders' or Debentureholders' Committees and by the Trustees under The Trust Indentures evidencing the debt. The intervention of a licensed trustee could only add to an already involved procedure and result in additional delays and expense.

We have no amendments to suggest to Bill N and view with favour the new provision permitting proposals for compromise before as well as after bankruptcy so as to permit the compromise of the claims of trade creditors. The enactment of the amendments to the Arrangement Act which we proposed in 1946 and which we again propose would, we submit, prevent the abuses which have taken place in the past under the Arrangement Act where trade-creditors were involved and would cause such compromises to be undertaken under this new provision of the Bankruptcy Act.

We shall be glad to attend before you in Ottawa should you desire to examine us on our views in this matter.

Respectfully submitted,

JULES E. FORTIN,
Secretary-Treasurer.

The Honourable Elie Beauregard, K.C.,
Chairman and Members of the Committee
on Banking and Commerce of the Senate,
Parliament Buildings,
Ottawa, Ontario.

APPENDIX "P"

In the matter of Bill N, an Act respecting bankruptcy

MEMORANDUM SUBMITTED TO THE STANDING COMMITTEE ON BANKING AND COMMERCE OF THE SENATE OF CANADA BY THE NATIONAL COMMITTEE OF CANADIAN COMMERCIAL TRAVELLERS

The National Committee of Canadian Commercial Travellers was formed in May, 1942, to provide an agency whereby its six member associations might speak with one voice. The member associations are as follows:—

Commercial Travellers Association of Canada, Toronto,
Dominion Commercial Travellers Association, Montreal,
Ontario Commercial Travellers Association, London,
Maritime Commercial Travellers Association, Halifax,
North West Commercial Travellers Association of Canada, Winnipeg, and
Associated Canadian Travellers, Calgary.

The six member associations comprise between them today some forty thousand (40,000) Commercial Travellers.

The Problem

The problem concerns the effect of Section 95(d) of the Act on travelling salesmen on commission.

No complaint is made of the degree of priority which such employees are given by this Section and no change is suggested in the text except with respect to the limit of $500 to which we shall refer later.

Claims by salesmen on commission for a priority in the event of bankruptcy have been fairly, if not liberally, dealt with by the Courts in the few cases where an appeal has been taken from the trustee's disallowance in the past. The difficulty has not been with the text of the law but in making this protection available to those it was designed to protect. Clerks, servants, travelling salesmen, labourers and workmen have ordinarily no income beyond their wages or commissions and when their employer goes bankrupt, even that disappears. Consequently, they can rarely avail themselves of the recourse to the Courts which the Act provides from a trustee's disallowance of their claim to a priority and which disallowance very often means that their whole claim in effect is denied because there will be nothing for the unsecured creditor.

An unsuccessful appeal to the Court from a trustee's disallowance of such a claim could, in this Committee's experience, easily cost $150 in taxable Court costs payable to the trustee. In addition, the employee would have to pay his own solicitor, making the total costs anywhere from $200 to $300. These costs are prohibitive and have resulted, in the experience of this Committee and its members, in many just claims being abandoned after an unfavourable decision from a trustee. The trustee makes a quick ex parte decision in these matters without hearing the creditor. His natural tendency is to disallow doubtful claims to a priority, leaving it to the creditor to appeal to the Courts where the matter can be properly heard and properly decided. That practice works no great hardship with respect to creditors other than employees. In their case, what is needed in our submission is a cheap summary and final review of the trustee's disposition of a claim to a priority under Section 95(d).

Recommendations

We further submit that this can best be secured within the framework of the Act by obliging the trustee to obtain the direction of the Court under Section 12 before disallowing a claim for priority under Section 95(d). We would, therefore, respectfully suggest and recommend that the following paragraph be added to Section 12(1):—

> A trustee must apply to the courts for directions before disallowing any claim to a priority under Section 95(d) and give notice of such application to the creditor. The direction of the court on such an application shall be final and conclusive, notwithstanding any other provision of this Act and no costs shall be awarded against any creditor who appears thereon.

We believe that the direction of the Court should be final because the employee will hardly ever be in a position to appeal and the amount of any such priority is limited by Section 95(d) to $500 which is not appealable under the present Act.

Our second submission is that the amount of $500 to which the priority is limited by Section 95(d) should be increased in the case of travelling salesmen to $500 plus expenses incurred by them on behalf of the bankrupt during the three months limited by the Section.

The whole respectfully submitted,

FOSTER, HANNEN, WATT & STIKEMAN
Attorneys for The National Committee of Canadian Commercial Travellers.

APPENDIX "Q"

March 31, 1949.

The Senate Committee on Banking and Commerce,
Ottawa, Ontario.

Re Proposed Amendment to the Bankruptcy Act

Gentlemen: Bill N, entitled an Act respecting Bankruptcy, which received a first reading in the Senate of Canada on Monday, the 14th of February, 1949, has been carefully studied and considered by a representative group of wholesale manufacturing and industrial firms in British Columbia, consisting of American Can Company Limited, Vancouver Supply Company Limited, W. H. Malkin Company Limited and Shell Oil Company of B.C. Limited. While being in agreement with the general terms of the proposed Bill, these firms would like to make the following submission with respect to certain sections of the proposed Act.

As presently constituted Section 79 (3) (*b*) provides that where the bankrupt is a corporation any officer, director or employee thereof may not vote on the appointment of a trustee or inspector. It is submitted that this section should be extended to provide that a company may not vote for the appointment of a trustee or inspector of one of its bankrupt subsidiary or associated companies of which it happens to be a creditor.

The purpose of this proposal is apparent from a consideration of the situation where a parent company has several subsidiary or associated companies with interlocking directorates and one of the subsidiary or associated companies goes into bankruptcy. It then transpires that the parent company or one of

the other associated companies has a large claim against the bankrupt company. By reason of the size of the claim the creditor parent or associated company, controls the election of the trustee and the inspector and has persons acceptable to it appointed or elected to the position. As a result, the parent or associated company exercises an extremely great influence on the subsequent administration of the bankrupt company. The fundamental reason for providing that any officer, director or employee of a bankrupt corporation cannot vote on the appointment of a trustee or inspector is that their interest is probably adverse to the position of the creditors. The same reasoning applies with equal force and effect with respect to a parent or an associated company voting in the case of the bankruptcy of one of its subsidiaries.

Section 82 of the Bill relates to the appointment of inspectors. It is suggested that a further subsection be added to Section 82 to provide that a creditor corporation may be appointed an inspector to act by its representative with power to change its representative if it deems it advisable so to do. It is very often the case that inspectors are chosen because they represent the larger creditors which in most instances are corporations. By way of illustration, very often the credit manager of a large creditor corporation is appointed inspector. Subsequently he may either leave the employ of the creditor company or be transferred to another department in either of which cases he is no longer actively interested either in the position of his company or ex-company as a creditor or in the affairs of the bankrupt generally. In circumstances such as these it is believed that the creditor corporation should have the privilege of appointing another of its employees to act in its behalf and it is submitted that the simplest way to accomplish this is to make provision for the appointment of a creditor corporation as an inspector to act through such representative as it may designate.

Section 121 (1) provides for the examination of the bankrupt and certain other persons before the Registrar of the Court or other authorized person. Quite often this examination is held before an official stenographer and even when held before the Registrar such examinations are in many cases perfunctory and of little or no assistance. It is submitted for your earnest consideration that a provision be inserted in this section whereby a bankrupt can be examined before the Judge in bankruptcy himself upon the request of the trustee and the approval by a majority of the inspectors. There are numerous instances where an examination before the Judge would be of immense benefit to the estate.

Section 142 provides that the Chief Justice may assign one or more of the Judges of his Court to exercise the powers and jurisdictions conferred by the Act. It is submitted that this provision be made mandatory by the substitution of the word "shall" for the word "may". The reasons prompting this submission are reasons of convenience to all having an interest in bankruptcy matters. The effect of such a designation would be that there would be one judge thoroughly familiar with the Bankruptcy Act and practice and procedure and who is recognized by all as an authority in these matters. His experience and advice would be available to trustees and others in connection with the administration of estates and it is believed that the guidance thus obtained would aid materially in overcoming many of the difficulties of practice, procedure and interpretation now encountered by trustees of bankrupt estates.

All of which is respectfully submitted on behalf of the above named corporations by their solicitors, Gowling, MacTavish, Watt, Osborne & Henderson, 56 Sparks Street, Ottawa, Ontario.

APPENDIX "R"

(Translation from the French)

REMARKS OF THE BAR OF THE PROVINCE OF QUEBEC IN CONNECTION WITH BILL "N", "AN ACT RESPECTING BANKRUPTCY".

We notice with satisfaction:

1. That the drafters of the new Bill have taken account of the objections and suggestions put before the Senate by the magistrature, the bar of several provinces and many public institutions on the Bill drafted by the late William J. Reilley, and that has been eliminated therefrom almost everything which proved unacceptable in the former draft.

2. That many provisions of the Bankruptcy Act, 1919, which was the best, have been re-established with improvement.

3. That the jurisdiction of the Courts remains unimpaired. In fact, the constant interference of the Superintendent in any bankruptcy, as proposed in the 1946 Bill, has rightly been eliminated.

4. That easy penalties and swiftly enforceable against recalcitrant debtors have been provided for.

5. That the bona fide creditors will now have a way of being informed of the result of their claims filed with the trustee, and of having the Court quickly dispose of same and at much reduced costs.

6. That the memorandum on priorities means a commendable endeavour to prevent long and costly proceedings, not only between federal and provincial authorities, but also between two or many departments of one government.

7. That the law is clearer, more logically arranged, and embodies many new provisions which are required under the present conditions of living.

8. That consideration has been given, in the remodelling of several sections of the Bill, to the jurisprudence established since 1920.

We notice, however, that the numbers of sections have been changed, whether because the insertion of fresh sections, whether on account of the embodying of actual rules in the Bill. Such arrangement is bound to bring confusion and is also liable to diminish the advantage of the established jurisprudence.

We suggest, therefore, that, whatever are the amendments or additions brought into the new law, these amendments or additions should be embodied therein under the section number corresponding to the amended sections.

Following a survey of the Bill, section after section, we submit the following observations:

2 (*d*) of the French version—It would be advisable, we believe, to include 2 (*f*) of the English version—"corporation publique" ("Public corporation") in the corporative entities which are excluded from the bankruptcy.

9 (4) We concur in the suggestion of the Toronto Board of Trade, in connection with this section.

9 (12) We prefer to keep the present General Rule 175 which prescribes a demand from the Superintendent.

10 (1) (*c*) We object to that provision as unfair for the creditor and contrary to the principle of our Civil Code. In our opinion, the section of the present Act on that point is preferable.

10 (1) (*h*) It would be better to use the word "settle" (régler) instead of the word "pay" (payer).

11 (7) In order to avoid any conflict, the following proviso should be added at the end of that subsection: "Subject to the rights of preferred creditors and of secured creditors."

12 (2) There is an obvious error in the French version which puts an affirmative sense while the English version puts the negative. This subsection should read: "Lorsque les biens *n'ont pas* été pleinement administrés, etc."

23 (2) We insist upon the keeping of General Rule 55 in its entirety.

25 It seems that the amount of $2,500 is too high and that the $1,500 limit should be maintained.

28 Why not the same notices as in ordinary bankruptcies?

40 We object that a permit of the Court be required to sue after the discharge of trustee. However, the present section should be clarified in that respect.

57 "Intérêts accrus" would be of better style that "intérêts courus".

64 We concur in the objections brought against this section, and we would like to maintain the present provisions, except that the words "with *the* view" in the English version should be substituted for "with *a* view".

94 (5) It would be preferable to use the word "rayer", instead of "repousser", and the word "réduire", instead of "déduire".

95 In our opinion, the case of a preferred creditor should be precised according to the law of the provinces where the preference or privilege has no funding on any particular property. Does he remain a resured creditor?

95 (*e*) We concur in the suggestion brought before the Committee by Mr. Justice Urquhart and by Mr. Pickup. Quid of the costs of the distraining creditor?

108 (2) The words "tax and due department" should be substituted for "taxing authority".

111 (3) Fifteen days instead of thirty days.

125 Let us keep the present section 138; but let us rather limit to the case of the bankrupt or of his agent the use of the evidence in Criminal Court.

127 The Court should determine in advance the trustee's fees in connection with the request for discharge.

129 In our opinion, the suspension should be limited to a maximum of five years. The words "suspend the discharge for not more than five years" should be substituted for "suspend the discharge".

135 We feel that section 147 of the present Act should be maintained.

140 (1) In the French version, it would be of better style to substitute "en vacance et en cabinet" for "en vacation et en chambre".

150 The present section 174 must be maintained, but it could be precised according to the construction of same by our Courts.

155(7) We accept the representations of the Toronto Board of Trade in respect of the deduction in secured debts.

N.B.—Rules now in force since the 23rd of February refer to sections of the present Act. A change in such references would be necessary.

The Secretary-Treasurer,
(Sgd.) CHARLES CODERRE.

Seal of the Bar of the Province of Quebec.
Montreal, April 11, 1949.